

RECEIVED

APR 24 2008

O.A.H.

ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

In the Matter of the Removal and Prohibition
of:

RICK T. McCULLOUGH

3925 East Patrick Lane
Phoenix, AZ 85050

Respondent.

No. 08F-BD059-BNK

**NOTICE OF HEARING AND INTENT
TO REMOVE AND PROHIBIT FROM
FURTHER PARTICIPATION IN ANY
MANNER IN THE CONDUCT OF THE
AFFAIRS OF A FINANCIAL
INSTITUTION OR ENTERPRISE**

PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-138, 6-161, and 41-1092.02, the above-captioned matter will be heard through the Office of Administrative Hearings, an independent agency, and is scheduled for June 23, 2008 and June 24, 2008, at 9:00 a.m., at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602) 542-9826 (the "Hearing").

The purpose of the Hearing is to determine whether grounds exist to remove or prohibit Respondent from further participation in any manner in the conduct of the affairs of a financial institution or enterprise pursuant to A.R.S. §§ 6-161(A), (B), and (C), and to prohibit Respondent, after a removal order has become final, from further participation in any manner as a director, officer, employee, agent or other person in the conduct of the affairs of any financial institution or enterprise pursuant to A.R.S. § 6-161(E).

Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied or expressed, to the Director of the Office of Administrative Hearings or the Director's designee to preside over the Hearing as the Administrative Law Judge, to make written recommendations to the Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office of Administrative Hearings has designated Kay Abramsohn at the address and phone number listed above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08,

1 the Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing,
2 final decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative
3 Law Judge is specifically prohibited from entering.

4 ~~Motions to continue this matter shall be made in writing to the Administrative Law Judge not~~
5 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue
6 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of
7 Administrative Hearings.

8 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by
9 counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable
10 opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence
11 and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative
12 Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S.
13 § 41-1092.07(B), any person may appear on his or her own behalf or by counsel.

14 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be
15 made by a court reporter or by electronic means. Any party that requests a transcript of the
16 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

17 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant
18 Attorney General Craig A. Raby, (602) 542-8889, 1275 West Washington, Phoenix, Arizona 85007.

19 **NOTICE OF APPLICABLE RULES**

20 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")
21 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting
22 forth the rules of practice and procedure applicable in contested cases and appealable agency actions
23 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules
24 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through
25 R2-19-122. A copy of these rules is enclosed.
26

1 Pursuant to A.A.C. R20-4-1209, Respondent shall file a written answer **within twenty (20)**
2 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Respondent's
3 position or defense and shall specifically admit or deny each of the assertions contained in this
4 Notice of Hearing. If the answering Respondent is without or is unable to reasonably obtain
5 knowledge or information sufficient to form a belief as to the truth of an assertion, Respondent shall
6 so state, which shall have the effect of a denial. Any assertion not denied is deemed admitted.
7 When Respondent intends to deny only a part or a qualification of an assertion, or to qualify an
8 assertion, Respondent shall expressly admit so much of it as is true and shall deny the remainder.
9 Any defense not raised in the answer is deemed waived.

10 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Respondent will be**
11 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as
12 true and admitted and the Superintendent may take whatever action is appropriate pursuant to A.R.S.
13 §§ 6-123, 6-131 and 6-161(B).

14 Respondent's answer shall be mailed or delivered to the Arizona Department of Financial
15 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or
16 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,
17 Arizona 85007 and to Assistant Attorney General Craig A. Raby, Consumer Protection & Advocacy
18 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

19 **Persons with disabilities may request reasonable accommodations such as interpreters,**
20 **alternative format or assistance with physical accessibility.** Requests for accommodations must
21 be made as early as possible to allow time to arrange the accommodations. If accommodations are
22 required, call the Office of Administrative Hearings at (602) 542-9826.

23 **FACTS**

24 1. On or around June 8, 2007, the Department received a complaint against Respondent
25 Rick T. McCullough ("Mr. McCullough") from Robbin Coulon, ("Ms. Coulon") Director of Legal
26 Services from the Area Agency on Aging, Region One.

1 2. As a result of the complaint, the Department subpoenaed and analyzed mortgage broker
2 files, escrow files, and mortgage banker files. In addition, the Department received copies of
3 documents subpoenaed by Michael Rice ("Mr. Rice") from the Arizona Corporation Commission.

4 3. The Department has determined Mr. McCullough repeatedly violated Consent Order No.
5 06F-BD006-BNK, issued by the Department on September 15, 2005. Furthermore, Mr.
6 McCullough engaged in improper business practices during the course of conducting mortgage
7 broker business; specifically:

- 8 a. Respondent made misrepresentations, false promises, and concealed material facts
9 from the lender, thus violating Consent Order No 06F-BD006-BNK;
- 10 b. Respondent made misrepresentations, false promises, and concealed material facts
11 from the borrower, thus violating Consent Order No. 06F-BD006-BNK;
- 12 c. Respondent failed to maintain a position of good standing with the Arizona
13 Corporation Commission, effective April 6, 2007, by failing to file the CactusCash,
14 Inc. annual report, thus violating Consent Order No. 06F-BD006-BNK;
- 15 d. Respondent failed to comply with the real estate lending disclosure requirements of
16 title I of the Consumer Credit Protection Act (CCPA) (15 United States Code
17 sections 1601 through 1666j), the Real Estate Settlement Procedures Act (RESPA)
18 (12 United States Code sections 2601 through 2617) and the regulations
19 promulgated under those acts, thus violating Consent Order No. 06F-BD006-BNK;
- 20 e. Respondent failed to use a statutorily correct written document agreement required
21 under A.R.S. § 6-906(C), thus violating Consent Order No. 06F-BD006-BNK;
- 22 f. Respondent violated an order of the Department as demonstrated in items a.
23 through e. above; and
- 24 g. Respondent engaged in improper or illegal business practices.

25 4. In October 2005, Respondent originated and closed an equity cash out refinance
26 transaction for two (2) borrowers. One (1) transaction for Dorothy Resler ("Ms. Resler"), age 87,
and one (1) transaction for Bernice Apodaca ("Ms. Apodaca"), age 79.

 5. The lender for both the Resler and the Apodaca mortgage loans, Argent Mortgage
Company, LLC ("Argent"), issued an underwriting condition requiring letters of explanation

1 (“LOEs”) stating the purpose for the equity cash out.

2 i. The LOE enclosed in the Resler mortgage lender file, dated October 19, 2005,
3 states the cash out will be used for home improvements; and

4 ii. The LOE enclosed in the Apodaca mortgage lender file, dated October 19, 2005,
5 states the cash out will be used for debt consolidation.

6 6. Prior to generating the LOEs above, Respondent executed agreements with Ms. Resler
7 and Ms. Apodaca to receive the equity proceeds from their cash out refinance transactions.

8 7. Respondent and Ms. Resler signed a document entitled ‘Fixed Rate Note’ on October
9 14, 2005, illustrating Respondent’s intention to receive the proceeds from the Resler transaction.

10 8. Respondent and Ms. Apodaca signed a document entitled ‘Fixed Rate Note’ on October
11 14, 2005, illustrating Respondent’s intention to receive the proceeds from the Apodaca transaction.

12 9. Respondent deposited the proceeds from the transactions for Ms. Resler and Ms.
13 Apodaca into an account he owned under the name ‘McCullough Insured Investments’ (“MII”).

14 10. On October 17, 2005, two (2) days before LOEs were delivered to Argent, Respondent
15 issued a letter to Ms. Resler and Ms. Apodaca thanking them for their investment.

16 11. Respondent deliberately failed to disclose to Argent that he intended to receive and
17 deposit the equity cash out proceeds from the Resler and Apodaca transactions into his MII account.

18 12. Respondent opened the MII account on October 18, 2005, at the 1st National Bank of
19 Arizona with a one hundred dollar (\$100.00) deposit.

20 13. Respondent closed the Resler transaction on October 21, 2005. The equity cash out
21 proceeds check to Ms. Resler equaled forty nine thousand, seven-hundred, sixty-six dollars and
22 eighty-five cents (\$49,766.85).

23 14. Respondent closed the Apodaca transaction on October 19, 2005. The equity cash out
24 proceeds check to Ms. Apodaca equaled thirty-seven thousand, one-hundred thirty-nine dollars and
25 eighty-nine cents (\$37,139.89).
26

1 15. Respondent deposited the eighty-six thousand, nine-hundred six dollars and seventy-four
2 cents (\$86,906.74) in total proceeds from the Resler and Apodaca transactions on October 24, 2005.

3 16. According to the deposit authorization and the Fixed Rate Note, Respondent disclosed to
4 Ms. Resler and Ms. Apodaca that the funds he deposited into the MII account were a real estate
5 investment.

6 17. On November 17, 2005, Respondent issued a check, from the MII account, to the
7 Diamond Source for forty-two thousand, eight-hundred sixty dollars (\$42,860.00). Prior to the
8 October 24, 2005, deposit of \$86,906.74, the MII account balance was only \$100.00. Respondent
9 used the funds obtained from Ms. Resler and Ms. Apodaca to purchase jewelry, not real estate.

10 18. The Arizona Corporation Commission ("ACC") issued a Notice of Pending
11 Administrative Dissolution ("Notice") to Respondent that became effective April 6, 2007.

12 19. The Notice was issued as a result of Respondent's failure to file the annual report for
13 CactusCash, Inc. Respondent further failed to respond to the Notice, and thus CactusCash, Inc.
14 ceased to be in good standing as required under A.R.S. § 6-903(B) and the Superintendent's
15 Consent Order No. 06F-BD006-BNK.

16 20. Respondent issued Federal Disclosures, which were signed by the borrower(s),
17 containing miscalculated Annual Percentage Rates ("APRs") on the Truth in Lending disclosure
18 statement, and blank spaces.

19 21. Respondent issued Servicing Transfer disclosure statements that failed to contain the
20 information required under RESPA section 3500.21.

21 22. Respondent failed to issue, and/or maintain with his records, a statutorily correct
22 document agreement, signed by all parties, when collecting documents from the borrower, in
23 connection with a mortgage application.

24 23. On September 15, 2005, Respondent signed Consent Order No. 06F-BD006-BNK
25 agreeing to several requirements including, but not limited to:
26

- a. Attaining and maintaining a position of good standing with the Arizona Corporation Commission;
- b. Issuing disclosures in compliance with RESPA and CCPA and maintaining records of the same;
- c. Using a statutorily correct written document agreement, signed by all parties, when collecting documents in connection with mortgage loan applications; and
- d. Refraining from concealing essential or material facts from borrowers or making misrepresentations and false promises to borrowers.

24. Respondent originated and closed another equity cash out refinance transaction for Ms. Resler and Ms. Apodaca in August 2006. Respondent collected the equity proceeds from the Resler and Apodaca closings and deposited them into his MII account. The proceeds Respondent received from the August 2006, cash out refinance transactions for Resler and Apodaca totaled fifty-one thousand, seven-hundred twelve dollars and fifty-eight cents (\$51,712.58).

LAW

1. Pursuant to Title 6, Chapter 9, Article I, of the Arizona Revised Statutes, the Superintendent has the authority and duty to regulate all persons engaged in the mortgage broker business and with the enforcement of statutes, rules, and regulations relating to mortgage brokers.

2. By the conduct set forth above, Mr. McCullough has violated statutes governing mortgage brokers as follows:

- a. A.R.S. § 6-909(L) by concealing essential material facts,
- b. A.R.S. § 6-909(L) by misrepresenting and making false promises;
- c. A.R.S. § 6-903(B) by failing to maintain good standing with the Arizona Corporation Commission;
- d. A.R.S. § 6-906(D) by failing to comply with the requirements under RESPA and CCPA;
- e. A.R.S. § 6-906(C) by failing to issue and/or maintain a statutorily correct written document agreement;
- f. A.R.S. § 6-905(A)(3) by violating the Department's Consent Order; and
- g. A.R.S. § 6-909(N) by engaging in illegal and improper business practices.

1 3. Mr. McCullough's conduct, as set forth above, constitutes acts, omissions, and practices
2 which demonstrate personal dishonesty or and unfitness to continue in office or to participate in the
3 conduct of the affairs of any financial institution or enterprise and is grounds for removal and the
4 prohibition of Mr. McCullough within the meaning of A.R.S. § 6-161(A)(1).

5 4. Mr. McCullough's violations of A.R.S. §§ 6-909(L), 6-903(B), 6-906(D), 6-906(C), 6-
6 905(A), and 6-909(N), constitute grounds for the removal and prohibition of Mr. McCullough from
7 participating in any manner in the conduct of the affairs of any financial institution or enterprise,
8 pursuant to A.R.S. § 6-161(A)(6).

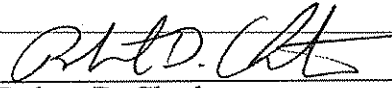
9 5. Mr. McCullough's violations of the Department's Consent Order No. 06F-BD006-BNK,
10 constitute grounds for the removal and prohibition of Mr. McCullough from participating in any
11 manner in the conduct of the affairs of any financial institution or enterprise, pursuant to A.R.S. § 6-
12 161(A)(2).

13 6. The violations, set forth above, constitute grounds for the Superintendent to order the
14 removal and the prohibition of Mr. McCullough from further participation in any manner as a
15 director, officer, employee, agent or other person in the conduct of the affairs of any financial
16 institution or enterprise, pursuant to A.R.S. § 6-161.

17 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the
18 above-described violations, the Superintendent may remove and prohibit Mr. McCullough from
19 further participation in any manner in the conduct of the affairs of any financial institution or
20 enterprise pursuant to A.R.S. § 6-161(E) and may order any other remedy necessary or proper for the
21 enforcement of the statutes and rules regulating mortgage brokers in Arizona pursuant to A.R.S.
22 §§ 6-123, 6-131 and 6-161.

1 DATED this 24 day of April, 2008.

2 Felecia A. Rotellini
3 Superintendent of Financial Institutions

4 By 
5 Robert D. Charlton
6 Assistant Superintendent of Financial Institutions

7 ORIGINAL of the foregoing filed this 24th
8 day of April, 2008, in the office of:

9 Felecia A. Rotellini
10 Superintendent of Financial Institutions
11 Arizona Department of Financial Institutions
12 ATTN: Susan L. Longo
13 2910 N. 44th Street, Suite 310
14 Phoenix, AZ 85018

15 COPY mailed/delivered same date to:

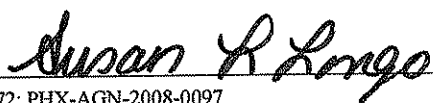
16 Kay Abramsohn, Administrative Law Judge
17 Office of Administrative Hearings
18 1400 W. Washington, Suite 101
19 Phoenix, AZ 85007

20 Craig A. Raby
21 Assistant Attorney General
22 Office of the Attorney General
23 1275 W. Washington
24 Phoenix, AZ 85007

25 Robert D. Charlton, Assistant Superintendent
26 Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

COPY MAILED SAME DATE by Regular Mail
and Certified Mail, Return Receipt Requested, and
SERVED SAME DATE by Process Server, to:

Rick T. McCullough
3925 East Patrick Lane
Phoenix, AZ 85050


136072; PHX-AGN-2008-0097



ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

Felecia A. Rotellini
Superintendent of Financial Institutions

Janet Napolitano
Governor

April 24, 2008

VIA CERTIFIED MAIL

RICK T. McCULLOUGH
3925 East Patrick Lane
Phoenix, AZ 85050



Reference: Docket # 08F-BD059-BNK/ RICK T. McCULLOUGH

Dear Mr. McCullough:

Please find the enclosed formal Notice of Hearing and Intent to Remove and Prohibit. The hearing is scheduled for **June 23, 2008 and June 24, 2008 at 9:00 a.m.** at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona.

Please contact **Assistant Attorney General Craig Raby** at (602) 542-8889 with any questions.

Very truly yours,

Robert D. Charlton
Assistant Superintendent

RDC:sll

Enclosures

cc: Craig Raby, Assistant Attorney General